

9249 PLM-11

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

[Claim by Military Member for Household Goods Lost or Damaged in Transit]

FILE: B-192978

DATE February 28, 1979

MATTER OF: Staff Sergeant Richard L. Laususe, USAF

- DIGEST:
1. Under applicable Air Force regulations each item on a claim voucher filed pursuant to the Military Personnel and Civilian Employees' Claims Act of 1964, 31 U.S.C. 240-243 (1976), may be considered a separate and distinct claim for purposes of adjudication. Thus, where items listed on a voucher may be of doubtful validity due to fraud, the claim may be broken down so as to cause forfeiture of only so much as is tainted with fraud. That procedure is not questioned since settlement of claims under the 1964 act is within the jurisdiction of the agency involved.
 2. Settlement of a claim under the Military Personnel and Civilian Employees' Claims Act of 1964, 31 U.S.C. 240-243 (1976), by the agency concerned is final and conclusive and not subject to review by the General Accounting Office or the courts. Ordinarily such a claim approved by the appropriate agency official should be paid by the agency's disbursing officer. However, the disbursing officer should inquire further if he suspects fraud, referring the matter to the head of the agency if necessary.

This action is in response to a letter dated August 8, 1978 (file reference ACF), with enclosures, from the Accounting and Finance Officer, Travis Air Force Base, California, requesting an advance decision as to the legality of paying a claim of Staff Sergeant Richard L. Laususe, USAF, 493-52-7807, for household goods lost or damaged during shipment from overseas in the circumstances described. The request was assigned PDTATAC Control No. 78-34 and forwarded to this Office by the Per Diem, Travel and Transportation Allowance Committee on September 21, 1978.

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The member filed a claim for household goods lost or damaged during shipment from overseas to his current duty station at Travis Air Force Base, California, pursuant to the provisions of the Military Personnel and Civilian Employees' Claims Act of 1964, Public Law 88-558, August 31, 1964, 78 Stat. 767 (31 U.S.C. 240-243 (1976)). The original claim was approved by the Travis AFB claims officer for \$1,436.66 and that amount was paid to the member on Voucher No. S-1903, dated January 9, 1978. Certain irregularities were discovered after payment as the result of an Air Force investigation into a related matter indicating the possibility that all or a substantial portion of the claim resulted from fraudulent representations. It has not been firmly established that Sergeant Laususe participated in creating the false claim; however, the claim submitted contained 2 items which were not owned by the member. Thereafter, the Base Commander approved involuntary deductions of the entire payment from the pay of the member as a collection of an erroneous payment. The collection is being made by the Air Force Accounting and Finance Center at the rate of \$119.73 per month. As of July 31, 1978, a total of \$359.19 had been collected from the member.

Sergeant Laususe subsequently filed a reclaim which was approved by the Air Force property claims officers in the amount of \$1,024. The claims officer and staff judge advocate indicate that the reclaim, which presumably omitted the 2 items previously claimed which were not owned by Sergeant Laususe, "bears no suspicion of being fraudulent in any manner whatsoever as to any and all items claimed." They indicate that the approval of the reclaim by the designee of the Secretary of Defense is final and not subject to question by our Office. However, in view of the inference of fraud associated with the original claim, the Accounting and Finance Officer presents several questions for our decision prior to making payment.

The questions presented are rephrased as followed:

Question 1: Is each item on a claim filed pursuant to the Military Personnel and Civilian Employees' Claims Act of 1964, 31 U.S.C. 240-243 (1976), to be considered a separate and distinct claim for purposes of adjudication?

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Question 2: Does the position taken consistently by the Comptroller General that fraudulent claims are to be denied in their entirety and the claimant left to his remedy in the Court of Claims apply in claims made pursuant to 31 U.S.C. 240-243 (1976)?

Question 3: Since claims settled administratively under 31 U.S.C. 242 are final and conclusive, are approvals of claims thereunder to be considered as final authority for payment by the United States disbursing officers when the suspected fraudulent or erroneous items have been resolved?

Question 4: May a paid claim be broken down so as to cause forfeiture of only so much as is tainted with fraud?

The false claims statute, 28 U.S.C. 2514 (1976), which applies to claims filed in the Court of Claims, provides that a claim against the United States shall be forfeited to the United States by any person who corruptly practices or attempts to practice any fraud against the United States in the proof, statement, establishment, or allowance thereof. The statute further provides that in such cases the Court of Claims shall specifically find such fraud or attempt and render judgment of forfeiture. We have consistently held that the fact that the false claims statute relates to claims before the Court of Claims and has no direct application in the audit of disbursing officers' accounts does not mean that it would be proper for a disbursing officer to pay a claim thought to be fraudulent. If fraud is suspected the claim obviously is of doubtful validity and under the principles of Longwill v. United States, 17 Ct. Cl. 288 (1881), and Charles v. United States, 19 Ct. Cl. 316 (1884), the claimant in such cases should be left to his remedy in the Court of Claims. See 41 Comp. Gen. 206 (1961); and 41 Comp. Gen. 285 (1961). See generally 57 Comp. Gen. 664, 667 (1978) and cases cited therein, with respect to our handling of fraudulent claims.

Additionally, the provisions of the Military Personnel and Civilian Employees' Claims Act of 1964, supra, is an exclusive remedy for service members seeking recovery against the United States for damages or loss of personal property incident to their service and they cannot pursue action under the Federal Tort Claims Act. Barr v. Brezina Const. Co. (C. A. Utah 1972),

D. Utah

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464 F. 2d 1141, certiorari denied, 409 U.S. 1125. A settlement of a claim under the Claims Act of 1964 is final and conclusive, and not subject to judicial review or review by our Office. 31 U.S.C. 242; 47 Comp. Gen. 317 (1967); Macomber v. United States (D.R.I. 1971) 335 F. Supp. 197, and authorities cited therein. Accordingly, we have no jurisdiction to review the settlement in this case; however, we note the following.

The Air Force regulations implementing the Claims Act of 1964 are found in chapter 6, Air Force Manual 112-1, December 1, 1972. Rule 15, Table 6-2 of that Manual provides in part as follows concerning items fraudulently claimed:

"When investigation discloses that a claimant, his agent, or employee has intentionally misrepresented the cost, condition, repair cost, etc. of any item claimed, that item will be disallowed in its entirety even though it sustained actual damage. However, the remainder of the claim, if proper, will be paid. * * *"

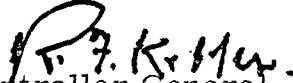
Concerning questions 1, 2 and 4, it would appear, therefore, that under that regulation the Secretary of the Air Force's designee could consider each item claimed as damaged or lost as a separate claim for adjudication purposes.

Concerning question 3, since settlement of claims under 31 U.S.C. 240-243 by the Secretary's designee is final and conclusive, ordinarily the approval of a claim by such designee after proper resolution by him of suspected fraudulent items may be considered final authority for payment by the disbursing officer. However, the facts that the false claims statute relates to claims before the Court of Claims and has no direct application in the audit of disbursing officers' accounts, or that the courts and our Office have no jurisdiction over settlement of claims under 31 U.S.C. 240-243, do not mean that it would be proper for a disbursing officer to pay a claim thought to be fraudulent. In a case in which a disbursing officer receives for payment a claim certified as payable by the appropriate designee under 31 U.S.C. 240-243, but which appears to the disbursing officer to be tainted with fraud, it would be the disbursing officer's duty to inquire of the designee concerning the possible fraud. If the matter is not resolved, the disbursing

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officer should refer it to the appropriate official within the agency for review--if necessary, the Inspector General or the Secretary--prior to payment.

In the instant case the member's reclaim has apparently been reviewed by the appropriate officials who have certified it as being free from suspicion of fraud. Thus, based on the information presented to us, it is now payable, less any amount remaining uncollected on the original claim. Accordingly, the voucher presented is being returned.


Deputy Comptroller General
of the United States